No. 83-1846 (2)

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IN THE

Supreme Court of the United States

October Term, 1983

LIFE SCIENCE CHURCH, *et al.*,
Petitioners,

v.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Whether this Court should review decisions of the state court which made no inquiry into petitioners' religious beliefs but only found that they had violated statutes applicable to all individuals.

Whether the Fifth Amendment shields petitioners who were found to have violated state anti-fraud statutes from turning over the proceeds of such fraud to a court-appointed receiver.

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Preliminary Statement

This brief is submitted by Robert Abrams, Attorney General of the State of New York, on behalf of the People of the State of New York in opposition to the petition by Life Science Church, Life Science College, Larry Ranucci, Frank Petrozza, Frank Ebner, Bernice Gross, and Annette

Schack ("Petitioners") for a writ of certiorari to the Court of Appeals of the State of New York. The petition should be denied because the decisions of the state courts enforce compliance with state laws which protect members of the public from fraud without in any way violating petitioners' constitutional rights. Petitioners' claims that the state court orders violate rights secured under the First and Fifth Amendments of the U.S. Constitution are not supported by law or fact.

Statement of the Case

Contrary to petitioners' assertions, this case does not involve any inquiry into or regulation of the religious beliefs of the Life Science Church or its members. Rather, it addresses conduct engaged in by petitioners and injurious to the people of the State of New York.

This proceeding was commenced by the Attorney General of the State of New York when, after a lengthy investigation, he learned that petitioners had violated numerous New York statutes which prohibit fraud, deceptive and misleading practices, unlicensed practice of law, and the unauthorized use of the term "college." The investigation revealed that petitioners' conduct had defrauded New York State residents of millions of dollars.

The trial court's decision, based on six weeks of unrefuted testimonial and documentary evidence presented by the New York State Attorney General, held that petitioners had violated numerous state statutes designed to prohibit fraudulent conduct. As the trial court noted, petitioners

rested "without producing any witnesses [and] . . . also failed to produce certain subpoenaed documents" (A 20).*

By fraudulently claiming that contributions to the Life Science Church were tax exempt and that a minister in the Life Science Church would pay no taxes, petitioners defrauded thousands of New York residents of millions of dollars (A 27).** Ministries in the Life Science Church were offered for sale to the public for $3,500 and purchasers were incorrectly advised that upon full payment they would "become completely and legally tax free" (A 18). Petitioners fraudulently advised a prospective minister that upon receipt of minister's credentials he could place "all his property in the name of his particular church and then pay for all personal and family expenses through the church account, thereby avoiding all taxes" (A 18).

Evidence at trial proved that these and other statements to prospective ministers concerning the tax consequences of becoming a minister in the Life Science Church were false. Although petitioners introduced into evidence a document which they claimed to be an Internal Revenue Service tax exemption letter, they later stipulated that they had never received a tax exemption from the Internal Revenue Service (A 25). The court found that the letter which had been displayed repeatedly to prospective ministers as an inducement to purchase minister's credentials "had the earmarks of forgery" (A 25). Petitioners were unable to

* Numerals preceded by "A" refer to pages in the Appendix to the Petition before this Court.

** Respondent's unrefuted allegations at trial proved that petitioners sold ministries to 5,000 New York State residents at a minimum price of $3,500. Therefore, petitioners defrauded New York State residents of at least $17,500,000.

authenticate the letter and it was disavowed by representatives of the Internal Revenue Service who testified for respondent (A 25).*

Respondent's expert witnesses further underscored the fraud perpetrated by petitioners. As the trial court found, those witnesses

> included some of the Nation's leading tax experts: Jerome Kurtz, former Commissioner of the Internal Revenue Service; Father Charles Whelan, professor of law, Fordham University Law School, an expert on church tax exemption; Stanley Weithorn, author of a definitive treatise on tax exempt organizations and Howard Schoenfeld, special assistant to the assistant commissioner for exempt organizations of the Internal Revenue Service. (A 21)

The testimony of these experts confirmed that the Life Science Church and its ministers did not enjoy tax exempt status and that petitioners' statements concerning the tax consequences of the purchase of ministries in the Life Science Church were fraudulent. Based on the evidence presented at trial, the court found that such representations by petitioners had violated section 63(12) of the New York Executive Law (A 25).

The court further found that the church's method of sale of ministries was a "pyramid" or chain distributor scheme which was prohibited by the New York General Business Law (A 25-26). Ordination in the Life Science

* Although a church is not required to apply to the Internal Revenue Service for tax exempt status, it must meet certain criteria if it claims that it enjoys such status. The Life Science Church does not meet the criteria for tax exempt status as required by the Internal Revenue Code (A 21-23).

Church, which took place after attendance at the Life Science "College," entitled each minister to receive a 10% commission for the first two ministers he brought into the church and $500 for each additional minister (A 19). At training seminars, new ministers were told that by joining the church they could become millionaires as a result of the commission system (A 18-20). Petitioners prepared a chart which purported to demonstrate that an investment of $3,500 or $3,600 could result in commissions of $1,023,500 to an individual minister. Petitioners instituted a computerized system to keep track of "who was entitled to what proportion of a new minister's payment" (A 27).

Petitioners, although not attorneys, gave legal advice to prospective ministers concerning tax and other matters (A 18, 20). At one seminar, petitioners presented a film featuring William Drexler, archbishop of the Life Science Church, who was introduced as "the greatest tax attorney in this country" (A 28). Actually, Drexler is a disbarred attorney who has since been convicted of criminal tax fraud for his misrepresentation of the tax laws in the sale of ministries in the Life Science Church (A 17-18). Petitioner Howard Tapen, also not an attorney, was to be contacted for "legal advice" (A 18, 28). The court held that "in its totality, the conduct constitutes the unauthorized practice of law in violation of section 478 of the Judiciary Law" as well as section 63(12) of the Executive Law (A 29).

Section 224 of the New York Education Law* prohibits anyone from using the title "college" unless properly licensed to do so by the state. Petitioners used the title "Life

* The text of the relevant section of this statute is printed in full in the appendix to this brief at RA 1.

Science College'' and purported to grant degrees although they were not licensed to do so. In fact, petitioners stipulated at trial that they were not licensed as a College by the New York State Department of Education (A 29). The court, therefore, found that petitioners had violated the Education Law.

The trial court enjoined petitioners from further violations of New York State statutes which prohibit fraud. A receiver was appointed to collect the fraudulently acquired property in order to create a fund for restitution to defrauded consumers (A 6). In granting respondent's application for injunctive relief, the New York Supreme Court stressed that ministers in the Life Science Church were free to follow its ''religious beliefs and adhere to its theology'' (A 30).

The New York courts never questioned the doctrines of the Life Science Church; nowhere in the record is there any support for petitioners' contention that the trial court impermissibly engaged in an inquiry into the validity of petitioners' beliefs. Indeed, petitioners' claim that the injunction against them violated the Free Exercise Clause of the First Amendment has been rejected by the New York appellate courts on four separate occasions (A 36-45).

The New York Supreme Court, Appellate Division, First Department, except for a modification deleting one decretal paragraph,* unanimously affirmed the trial court's judg-

* The Appellate Division deleted decretal paragraph 6, which had found the individual petitioners to be in contempt of a preliminary injunction entered August 12, 1980. The Appellate Division found that the record did not support the finding of contempt against the individual petitioners, but otherwise upheld the finding of contempt rendered against the Life Science Church.

ment in an order entered April 26, 1983. The decision is reported at 93 A.D. 2d 774, 461 N.Y.S. 2d 803 (1st Dept. 1983) and is reprinted at A 39. Upon the Appellate Division's affirmance of the trial court's judgment, petitioners served a Notice of Appeal as of right to the New York Court of Appeals. The Court of Appeals, *sua sponte,* examined its jurisdiction and after review of counsels' memoranda of law, dismissed the appeal on September 1, 1983, concluding that an appeal as of right did not lie "upon the ground that no substantial constitutional question is directly involved" (A 40-41).*

ARGUMENT

I.

The Trial Court's Injunction Did Not Violate Petitioners' First Amendment Rights But Merely Restrained Petitioners from Conduct Violative of New York State Law.

Petitioners' claim that the trial court should not have examined the church's or its practitioners' activities is obviously without merit (Pet. 15-33). This Court has long recognized that the right to freedom of religion secured by the First Amendment does not immunize from scrutiny acts performed in the name of religion. *Reynolds* v. *United States,* 98 U.S. 145 (1878); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940).

Over one hundred years ago, in *Reynolds,* this Court established that the Free Exercise Clause protected reli-

* The Appellate Division and the Court of Appeals both denied petitioners' subsequent applications for leave to appeal to the Court of Appeals (A 42, 44).

gious opinions and beliefs but did not limit the government's power over "actions which were in violation of social duties or subversive of good order." *Reynolds, supra* at 164. In *Reynolds,* this Court upheld the constitutionality of a statute which prohibited bigamy where the defendant, a Mormon, contended that he had acted in conformity with religious principles in committing bigamy. The Court held that "[l]aws are made for the government of actions and while they cannot interfere with mere religious beliefs and opinions, they may with practices." *Id.* at 166. "To foreclose a court from analyzing a church's activities as needed to determine whether those activities violated a statute, on the ground that the First Amendment forbids such inquiry, would mean that there are no restraints or limitations on church activities. The 'free exercise' of religion is not so unfettered." *United States* v. *Sun Myung Moon,* 718 F.2d 1210, 1227 (2d Cir. 1983), *cert. denied,* —— U.S. ——, 104 S.Ct. 2344 (1984) (citations omitted).

Similarly, petitioners may not "under the cloak of religion . . . with impunity commit frauds upon the public." *Cantwell, supra* at 306.* In the case at bar, the proof at trial did not impermissibly question petitioners' religious beliefs but demonstrated that their acts were deceptive, misleading and unlawful. In addressing the petitioners' First Amendment defense at trial, the trial court stated that the First Amendment to the United States Constitution permitting

* *See also SEC* v. *World Radio Mission, Inc.* ("WRM"), 544 F.2d 535 (1st Cir. 1976), where the court was faced with application of anti-fraud statutes to a religious organization. Although the WRM defendants claimed to be exempt from application of the federal securities laws because they were a religious organization, the court's decision ultimately rested not on constitutional construction but on the court's finding that defendants had violated the anti-fraud provisions of the Securities Act of 1933.

the free exercise of religion was not a "shield" to the application of state statutes enacted to protect society and maintain peace, order and morality (A 32). In saying this, the trial court recognized that petitioners' First Amendment freedoms were not directely affected. Indeed, it is even a long-accepted principle that certain acts, even though prompted by religious beliefs or principles, are subject to governmental regulation when a substantial threat to public safety, peace or order exists. *Sherbert* v. *Verner* 374 U.S. 398 (1963); *Reynolds, supra* at 166-167. As long as the State can show that the limitation on religious practices is essential to accomplish an overriding governmental interest, it is justifiable. *United States* v. *Lee,* 455 U.S. 252 (1982); *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972); *Gillette* v. *United States,* 401 U.S. 437 (1971). *See also Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943); *United States* v. *Ballard,* 322 U.S. 78 (1944).*

Yoder, on which petitioners improperly rely, presented a radically different factual situation from that involved here. In *Yoder,* this Court recognized that First Amendment religious freedoms were subject to regulation where important governmental interests were involved. In finding that the interest of people of the Amish religion in limiting their children's education to eight grades supersedes the interest of the state, this Court emphasized that it was

* *Murdock* and *Ballard* are cited by petitioners in support of their First Amendment argument. Yet, both cases accept the fundamental distinction between acts and beliefs discussed herein. In *Murdock,* the Court made clear that First Amendment rights are not absolute and that states are not precluded from enacting statutes "concerning punishment for any . . . unlawful acts . . ." *Murdock,* 319 U.S. at 110, even where those acts are part of religious practice. *Ballard,* too, articulates the distinction between acts and beliefs. *Ballard,* 322 U.S. at 86.

not faced with a situation in which there was "any harm to the . . . public safety, peace, order or welfare . . ." *Id.* at 230. Here, however, the trial court was faced with widespread fraud which was proved conclusively at trial.

The State has a strong interest in protecting its residents against petitioners' fraudulent activities and any incidental impact on their religious practices is therefore justifiable.*

In sum, the state court decisions in this case rest firmly on the permissible application of state law to the facts of this case. The court did not enjoin the Life Science Church from practicing its religion but only from engaging in "those practices not protected by the Constitution and statutes and which are violative of laws applicable to all individuals, groups, organizations and institutions in our society" (A 17). Because the trial court only examined petitioners' activities to determine whether they violated state law, petitioners' First Amendment rights were not violated. Further examination of the trial court's decision by this Court is therefore not warranted.

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* Petitioners make the baseless claim that the trial court's injunction is invalid because a less restrictive alternative was available. Petitioners claim that the State could have prosecuted individual ministers for tax evasion in lieu of prosecuting petitioners for fraud. Were petitioners' position upheld, their fraud, which was proved conclusively at trial, would go unpunished while the victims of that fraud would be the only subjects of prosecution.

II.

The Provisions of the State Court Judgment Which Ordered Petitioners to Turn Over Assets Do Not Threaten Fifth Amendment Rights and Should Not Be Reviewed by This Court.

Petitioners' assertion that the provisions of the judgment violate their Fifth Amendment privilege against self-incrimination is totally without merit (Pet. 34-37).

The cases which petitioners cite in support of their Fifth Amendment claim all involve statutory schemes which require an individual essentially to submit a written admission of guilt to a governmental agency. Here petitioners are not required to make a "testimonial communication" but rather to turn over, after a judicial finding of culpability, property in their possession in order to create a fund for restitution to defrauded consumers. Such a requirement does not involve the Fifth Amendment. *Cf. Fisher* v. *U.S.*, 425 U.S. 391 (1976). Furthermore, petitioners may not claim the Fifth Amendment privilege as to records or property of the Life Science Church, since the privilege is personal and does not insulate economic or other interests of organizations, incorporated and unincorporated, when to do so would be to frustrate appropriate governmental regulation. *Friedman* v. *HiLi Manor Home for Adults,* 42 N.Y. 2d 408, 397 N.Y.S. 2d 967, 366 N.E. 2d 1322 (1977).

Indeed, the court's judgment does not, as petitioners argue, force them to choose between the exercise of the Fifth Amndment privilege or a penalty. Rather, the judgment imposes penalties for petitioners' fraud and contempt

of a court order. To forbid such action by the court would render meaningless virtually every civil fraud conviction and contempt proceeding in this country.

Conclusion

The state court properly applied state anti-fraud statutes to petitioners without violating their constitutional rights. Since petitioners have raised no substantial constitutional questions, review by this Court is not warranted. It is, therefore, respectfully requested that this Court deny the petition for certiorari.

Dated: New York, New York
June 13, 1984

Respectfully submitted,

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APPENDIX

N.Y. Education Law § 224
(McKinney 1969 and Supp. 1983)

§ 224. Prohibitions

1. No individual, association, copartnership or corporation not holding university, college or other degree conferring powers by special charter from the legislature of this state or from the regents, shall confer any degree or use, advertise or transact business under the name university or college, or any name, title or descriptive material indicating or tending to imply that said individual, association, copartnership or corporation conducts, carries on, or is a school of law, medicine, dentistry, pharmacy, veterinary medicine, nursing, optometry, podiatry, architecture or engineering, unless the right to do so shall have been granted by the regents in writing under their seal.

2. No person shall buy, sell or fraudulently or illegally make or alter, give, issue or obtain or attempt to obtain by fraudulent means any diploma, certificate or other instrument purporting to confer any literary, scientific, professional or other degree, or to constitute any license, or a duplicate thereof, or any certificate of registration, or to certify to the completion in whole or in part of any course of study in any university, college, academy or other educational institution.

3. No person, firm, association or corporation shall offer or otherwise advertise a college degree in the state of New York without the prior written approval of the department, in accordance with the regulations of the commissioner of education, unless the institution offering or advertising

such a degree is accredited by at least one accrediting commission recognized by the United States commissioner of education as a reliable authority for the purpose of accreditation at the post secondary level or unless the program leading to such degree is registered with the department of education of the state of New York. A violation of this subdivision is a violation punishable by a fine not to exceed five hundred dollars. Any newspaper or other advertising medium which carries said advertisement shall be exempt from the provisions of this subdivision.

4. No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person, with intent to deceive, falsely represent himself to have received any such degree or credential, nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorizd institution the degree or certificate for which the letters are registered. Counterfeiting or falsely or without authority making or altering in a material respect any such credential issued under seal shall be a felony; any other violation of this section shall be a misdemeanor; and any person who aids or abets another, or advertises or offers himself to violate the provisions of this section, shall be liable to the same penalties.